

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

LEONARD C. ONYIAH,

Civil No. 16-4111 (JRT/LIB)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

ST. CLOUD STATE UNIVERSITY AND
BOARD OF TRUSTEES, et al,

Defendants.

Boris Parker, Jordan Anderson, **PARKER & WENNER**, 100 South Fifth Street, 2100 Fifth Street Towers, Minneapolis, MN 55402, Kenechukwu Okoli, **LAW OFFICES OF K.C. OKOLI, P.C.**, 330 Seventh Avenue, 15th Floor, New York, NY 10001, for plaintiff.

Kathryn Fodness, **MINNESOTA ATTORNEY GENERAL'S OFFICE**, 445 Minnesota Street, Suite 1100, St Paul, MN 55101-2128, for defendants.

Based upon the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois, and after an independent review of the files, records and proceedings in the above-entitled matter, **IT IS HEREBY ORDERED** that:

1. That based upon Plaintiff's counsel's representations on the record at the July 24, 2017, Motion Hearing, all of Plaintiff's claims under the Minnesota Human Rights Act are **DISMISSED without prejudice**.

2. That based upon Plaintiff's counsel's representations on the record at the July 24, 2017, Motion Hearing, all of Plaintiff's claims against Defendant St. Cloud State University and Board of Trustees and Defendant Minnesota State Colleges and Universities are **DISMISSED with prejudice**.

3. That Defendants' Motion to Dismiss, [Docket No. 18], is **GRANTED IN PART AND DENIED IN PART.**

- a. Plaintiff's claims under 42 U.S.C. § 1981 are **DISMISSED with prejudice;**
- b. Plaintiff's claims for monetary and punitive damages against all named individual Defendants in their official capacities are **DISMISSED** with prejudice;
- c. Defendants' Motion to Dismiss Plaintiff's First Cause of Action of First Amendment retaliation against Defendants Gregory, Buske, and Hanszek-Brill is **DENIED;**
- d. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action is **DENIED** as to his claim that Defendants Buke, Hanszek-Brill, and Gregory discriminated against him on the basis of his race or national origin in December 2013, when they denied his request to use Learning Assistants; but, in all other respects, Defendants' Motion to Dismiss is **GRANTED**, as to Plaintiff's Second Cause of Action which is **DISMISSED without prejudice;**
- e. Defendants' Motion to Dismiss Plaintiff's Third Cause of Action of First Amendment Retaliation against Defendants Gregory and Buske arising out of the denial of Plaintiff's 2014/2015 participation in the S2S Program during sabbatical or full return to participation in the program following sabbatical is **DENIED;** but in all other respects, Defendants' Motion to Dismiss is **GRANTED**, as to Plaintiff's Third

Cause of Action which is **DISMISSED without prejudice**;

- f. Defendants' Motion to Dismiss Plaintiff's Fourth Cause of Action of First Amendment Retaliation against Defendants Gregory and Zhao arising out of reclassification of students in Plaintiff's Spring 2016 STAT 193 class is **DENIED**;
- g. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action of First Amendment Retaliation against Defendants Gregory and Zhao arising out of adversely scheduling Plaintiff's Spring 2016, class schedule is **DENIED**; but in all other respects, Defendants' Motion to Dismiss is **GRANTED**, as to Plaintiff's Fifth Cause of Action which is **DISMISSED without prejudice**;
- h. Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action against Defendant Gregory alleging discrimination against him on the basis of his race or national origin arising out of scheduling Summer 2016 classes is **DENIED**;
- i. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action of First Amendment Retaliation against Defendants Gregory, Zhao, Buske, and Hanszek-Brill is **DENIED**;
- j. Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action is **GRANTED**, and the cause of action is therefore **DISMISSED without prejudice**;
- k. Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action is **GRANTED**, and the cause of action is **DISMISSED without**

prejudice; and

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint on the basis of Qualified Immunity is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 10, 2017
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court